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| 10/748,060   | 12/30/2003  | Douglas Morgan Trent | RPS920020168US1     | 8325                             |
| 36491  | 7590        | 04/01/2009           |                     |                                  |
| Kunzler & McKenzie<br>8 EAST BROADWAY<br>SUITE 600<br>SALT LAKE CITY, UT 84111 |             |                      |                     | EXAMINER<br>NGUYEN, THUY-VI, THI |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |
|------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/748,060 | <b>Applicant(s)</b><br>TRENT, DOUGLAS MORGAN |
|                              | <b>Examiner</b><br>THUY VI NGUYEN    | <b>Art Unit</b><br>3689                      |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 12/15/18.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 15-18, 25-29 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14, 19-24, 30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/06/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This is in response to the applicant's communication filed on December 15, 2008, wherein:

Claims 1-30 are currently pending;

Claims 1-4, 7, 8-1, 14, 19-21, 30 have been amended;

Claims 15-18, 25-29 have been withdrawn;

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-7, 8-13, 14, 19-24 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. For example, in independent claims 1 and 14, it is unclear what are the function of the software involve in the modules are using to calculate the result of the three steps (d), (e) and (f) are using; e.g. step (d) " calculating a plurality of option preferences of each option for each party", step (e): "calculating a plurality of sum of weighted option preferences for the issue wherein the sum of

*weighted option preferences is the sum of the issue weight of each option for each party multiplied by the option preference of each option for each party", and step (f) "calculating a negotiation solution from the sum of weighted option preferences, the negotiation solution comprising an option set ". Applicant is requested to supply the name and the function of the modules above so that a person of ordinary skill in the art can make or use the invention. Similarly, other set of claims contain the same calculating modules which are similar to claim 14 above, are rejected for the same reason set forth above.*

Claim 30, claim element "means for identifying ...., means for determining..., means for calculating...." is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. Applicant's specification appears to disclose " input module, computing module, out put module for calculating the weighted option preference for the issue of the negotiation", but not the means for identifying ...., means for determining..., means for calculating...." as stated in claim above. Therefore, applicant is required to

- (a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or
- (b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

- (a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or
- (b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. F& more information, see 37 CFR 1.75(d) aid MPEP 21si and 608.01(0).

#### ***Rejections - 35 USC § 101***

**4. 35 U.S.C. 101 reads as follows:**

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**5. Claims 14, 19-20 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a particular machine or apparatus, or (2) transform a particular article to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson,**

409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

With respect to claims 1-20, the method claims are:

- (1) not tied to a particular machine or apparatus, nor
- (2) transforms a particular article to a different state or thing.

With respect to claim 14, the claim language does not transform the underlying subject matter and the process is not tied to another statutory class. For instance in claim 1, the process steps of “*identifying.., determining..., comprising..., calculating..., displaying...*” is not tied to another statutory class, such as an apparatus or particular machine, and thus, the claims are directed to nonstatutory subject matter.

Here claim 14 fails to meet the above requirements since there is not a sufficient (1) tie to another statutory class (2) transformation, and thus is directed to nonstatutory subject matter. Insertion of the use of another statutory class (computer) such as “computer-implemented” or “using a computer” features in the preamble and the critical functions/bodies of the claims would overcome the rejections.

Claims 19-20 are rejected for the same reasons set forth above wherein the 2<sup>nd</sup> test is not fully satisfied.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7, 8-13, 14, 19-24 and 30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over THIESSEN (US 5,495,412).

As of 12/15/08, the amended claim 1 (system) is as follow:

(Currently Amended) A data processing apparatus for calculating a negotiation solution, the apparatus comprising:

an input module configured to receive an issue, the issue comprising part of a negotiation, the negotiation comprising one or more issues, the input module

further configured to receive a plurality of issue weights of the issue for a plurality of parties to the negotiation for the issue, wherein each party to the negotiation provides an issue weight, each issue weight comprising a relative importance for the issue to each party, the input module further configured to receive ~t a plurality of options of the issue, the input module further configured to receive and a plurality of option preferences of each option for each party;

~~a storage module configured to store the issue, the issue weights, the options, and the option preferences;~~

a computation module configured to calculate a plurality of weighted option preferences of each option for each party, wherein each weighted option preference is the issue weight of the party multiplied by the option preference of the party, the computation module further configured to calculate a sum of weighted option preferences for the issue by summing the weighted option preferences for each option of the issue, the computation module further configured to ~~calculate~~ identify a negotiation solution from the sum of weighted option preferences; and an output module configured to display the issue, the options, an option set, and the negotiation solution; and

wherein all or a portion of the input module, the computation module, and the output module comprise one or more of logic hardware and executable code, the executable code stored on one or more computer readable media.

1. Note: as indicated in the claim, claim 1 is a "data processing apparatus". In examination of the apparatus claim, the claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See MPEP 2114. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990). Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Also, this is an apparatus claim and intended use limitation for the system/device or apparatus, i.e. "for calculating a negotiation solution" carries no patentable weight.

Also, as indicated in claim 1, this is a "data processing" apparatus (see preamble", therefore, the limitation after "data" or "information" or such as " issue" or "option", etc., have been determined to be non-functional descriptive material (NFDM), thus having no patentable weight and does not need to be taught by the prior art. Nonfunctional descriptive material can not render nonobvious an invention that would have otherwise been obvious. *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 40-4 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability. See MPEP 2106.01.

**As for independent Apparatus claim 1**, THIESSEN discloses a data processing apparatus for calculating a negotiation solution, the apparatus comprising:

an input module configured to receive plurality of information e.g. (1) an issue about the negotiation which comprises one or more issues; (2) a plurality of issue weight of the issue for a plurality of parties to the negotiation, each party provides an issue weight comprise a relative importance for the issue of each party, (3) receive a plurality of option of the issue and a plurality of option preferences of each option for each party.

{see at least abstract, figures 1, 2A-B, 4 col. 3, lines 19-31, col. 4, lines 13-44; lines 54-63; col. 5, lines 41-46; col. 6, lines 3-6; and lines 27-27-43, disclose Interactive Computer Assisted Negotiation Process Support System (ICANS) are used by each party involved in the negotiation process to input information pertaining to their individual preferences/option preferences/relative satisfaction on each issue to be negotiated. Before each party enter information regarding their preferences/option preferences on the outcome of a particular issue, they each must enter a bargaining range/issue weight that defines the range of acceptable outcomes/option/solution for that issue from least desirable to most desirable/relative importance}

a computation module configured to calculate a plurality of weighted option preferences which is the issue weight multiplied by the option preference of the party, {see Fig. 3, col. 7, lines 65-67, col. 8, lines 1-15, col. 9, lines 15-65, col. 10, lines 1-25}, the module further configured to calculate a sum of weighted option preferences for the

issue by summing the weighted option preferences {see Fig. 3, col. 8, lines 15-67, col. 10, lines 10-67}, the module further configured to identify a negotiation solution from the sum of weighted option preferences, {see col. 8, lines 15-67, col. 12, lines 7-52}

an output module configured to display the issue, the options, an option set/solution and the negotiation solution; {see Figs. 2A, 5, col. 12, lines 7-50}.

Alternatively, the selection or use of other negotiation issue terms such as "relative importance", "option preferences", etc., it would have been obvious as mere using other similar issue variables to achieve similar results, see col. 7, lines 9-16 "...*any issue variables*...". Moreover, a lot of these terms are considered as non-functional descriptive materials and have no patentable weight.

As for dep. claim 2, which deals the computation modules calculates a maximum of weighted option preferences for each issue in the negotiation, this is fairly taught in THIESSEN, {see col. 8, lines 15-67, col. 9, lines 15-65, col. 10, lines 10-67}.

As for dep. claim 3, which basically contains a method step, "identifies" in an apparatus claim and this has no patentable weight. Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987). Also, this is an apparatus claim and intended use limitation for the system/device or apparatus, i.e. "identifies.., calculating..." carries no patentable weight.

Also, this is a "data processing" apparatus (see preamble", therefore, the limitation after "data" or "information" or such as " issue" or "option", "value" etc., have been determined to be non-functional descriptive material (NFDM), thus having no patentable weight and does not need to be taught by the prior art.

Furthermore, the steps discloses wherein the computation module identifies the negotiation solution as an option set of the maximum of the sum of weighted option preferences, calculating a sum the maximum of the sum of weighted option preferences for the issue to form a maximum combined utility comprising a maximum value for the plurality of parties, this is fairly taught in THIESSEN, see figures 3-5 see col. 8, lines 15-67, col. 9, lines 15-65, col. 10, lines 10-67].

As for dep. claim 4, which deals with the computation module configured to calculate a convexity/maximum value of the negotiation, this is fairly taught in THIESSEN, see abstract, figures 3, 5 col. 11, lines 5-10, col. 12, lines 17-45, col. 13, lines 5-25, col. 15, lines 21-29}. Furthermore, it appears that the value or definition of convexity is well known in the art for calculating a result, and therefore, the use of any other definition or formula or equation to determine the value/feature of the convexity, such as in claim 4 would have been obvious as mere selection of other similar definition or formula to achieve similar results.

As for dep. claim 5, which deal with the creating at least one option set/value to inputs of the negotiation issue, the issue weight, the option {, and the output module configured to communicate the at least one option to each party, the input module

receiving a utility definition from each party in response to the option set, the computation module configured to calculate the option preference of each party in response to the utility definition, this is fairly taught in THIESSEN

{see at least abstract, figures 1-5, col. 3, lines 19-31, col. 4, lines 13-19; lines 54-63; col. 5, lines 41-46; col. 6, lines 3-6; and lines 27-66, col. 9, lines 15-65, col. 10, lines 10-67}

As for dep. claim 6 which deals with the computation module calculates a negotiation solution by selecting the option set with a minimum sum of weighted option preference for the issue, this is fairly taught in THIESSEN, see abstract, col. 3, lines 29-36, col. 10, lines 10-67, figure 2A-B}

As for dep. claim 6, which basically contains a method step, "selecting" in an apparatus claim and this has no patentable weight. Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987). Also, this is an apparatus claim and intended use limitation for the system/device or apparatus, i.e. "calculates...by selecting...." carries no patentable weight.

Also, this is a "data processing" apparatus (see preamble), therefore, the limitation after ""option set", value have been determined to be non-functional descriptive material (NFDM), thus having no patentable weight and does not need to be taught by the prior art.

As for dep. claim 7, which deals with the computation module is configured to calculate an option preference according to multi-attribute utility analysis, this is fairly taught in THIESSEN, see col. 6, lines 60-67, col. 7, lines 1-16, figures 2-5}.

As for independent claim 8, THIESSEN disclose a system for calculating a negotiation solution, the system comprising: a data processing device, a server, a network {see abstract, figure 1, col. 5, lines 26-64}. Basically, this claims have the same limitation as the independent claim 1 (step 1 and 2) rejected above. It is rejected for the same reason sets forth the independent claim 1 cited above.

As for dep. claims 9-13, basically these claims have the similar limitation as the rejected dep. claims 2-6 above. They are rejected for the same reason sets forth dep. claims 2-6 above.

**As for independent method claim 14,** THIESSEN disclose a process for calculating a negotiation solution, the process comprising:

Identifying an issue, the issue comprising part of a negotiation, the negotiation comprising one or more issues; {see abstract, figures 1, 2A}

determining a plurality of issue weights/ranges of the issue for a plurality of parties to the negotiation wherein each party provides an issue weight, each issue weight comprising a relative importance/most desirable value for the issue to each party;

{see figure 2A-5, abstract, col. 4, lines 13-44, col. 5, lines 41-46; col. 6, lines 3-6; and lines 27-27-43, disclose Interactive Computer Assisted Negotiation Process Support System (ICANS) are used by each party involved in the negotiation process to input information pertaining to their individual preferences/option preferences/relative satisfaction on each issue to be negotiated. Before each party enter information regarding their preferences/option preferences on the outcome of a particular issue, they each must enter a bargaining range/issue weight that defines the range of acceptable outcomes/option/solution for that issue from least desirable to most desirable/relative importance};

calculating a plurality of option preferences/relative satisfaction of each option for each party;

{see figures 3-5, col. 7, lines 65-67, col. 8, lines 1-15}

calculating a plurality of sum of weighted option preferences for the issue wherein the sum of weighted option preferences is the sum of the issue weight of each option for each party multiplied by the option preference of each option for each party;

{see Figs. 3-5, col. 8, lines 15-67, col. 10, lines 10-67}

calculating a negotiation solution from maximum of the sum of weighted option preferences for each issue of the negotiation, the negotiation solution comprising an option set; and

{see figures 3-5, col. 8, lines 15-67, col. 12, lines 7-52}

displaying the issue, the options, an option sel, and the negotiation solutions to the plurality of parties;

{see abstract, Figs. 2A, 5, col. 45-63, col. 12, lines 7-50}.

Alternatively, the selection or use of other negotiation issue terms such as "relative importance", "option preferences", etc., it would have been obvious as mere using other similar issue variables to achieve similar results, see col. 7, lines 9-16 "...any issue variables...". Moreover, a lot of these terms are considered as non-functional descriptive materials and have no patentable weight.

As for independent claim 19, which deals with the computer readable storage medium comprising computer readable code executable to perform a process for calculating a negotiation solution which carries the method steps of the independent claim 14 above, it is rejected for the same reason sets forth the independent claim 14 as indicated above.

As for dep. claim 20, which has the similar limitation as dep. claim 3 above, it is rejected for the same reason sets forth dep. claim 3 as indicated above.

As for dep. claims 21 and 23, which has the similar limitation as dep. claims 6-7 above, it is rejected for the same reason sets forth the dep. claims 6-7 as indicated above.

As for dep. claim 22, which deals with the sum of issue weights for a party is equal to one, this is fairly taught in THIESSEN, col. 8, lines 25-29}.

As for dep. claim 24, which deals with the feature of the option preference "is calculated according..", this phrase is not a positive recited method step, and therefore is interpreted as "being capable of" and the "option preference" of THIESSEN is capable of having this limitation.

**As for independent Apparatus claim 30**, basically this claim deals with means plus function which is carried the method steps of the rejected independent claim 14 above. It is rejected for the same reason sets for the independent claim 14 as indicated above.

***Response to Arguments***

9. Applicant's arguments on 12/15/08 with respect to claims 1-7, 8-13, 14, 19-24, 30 have been considered but are moot in view of the new ground(s) of rejection.

As for the argument on the 101 rejection, Applicant has amended the claim 14 to recite the step of "*displaying the issue, the options, an option set, and the negotiation solution to the plurality of parties*" to clarified that these items are tangibly displayed to the plurality of parties. However 101 rejection is maintained to claim 14 because the claim fails to a first prong test which is not tied to a particular machine or apparatus.

The Supreme Court precedent, and recent Federal Circuit decisions under 35 U.S.C 101, the Office's guidance to examiners is that a § 101 process must (1) be tied to a particular machine or apparatus, or (2) transform a particular article to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972). If neither of these

requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

With respect to claims 1-20, the method claims are:

- (1) not tied to a particular machine or apparatus, nor
- (2) transforms a particular article to a different state or thing.

With respect to claim 14, the claim language does not transform the underlying subject matter and the process is not tied to another statutory class. For instance in claim 1, the process steps of “*identifying.., determining..., comprising..., calculating..., displaying...*” is not tied to another statutory class, such as an apparatus or particular machine, and thus, the claims are directed to nonstatutory subject matter.

Here claim 14 fails to meet the above requirements since there is not a sufficient (1) tie to another statutory class (2) transformation, and thus is directed to nonstatutory subject matter. Insertion of the use of another statutory class (computer) such as “computer-implemented” or “using a computer” features in the preamble and the critical functions/bodies of the claims would overcome the rejections.

As for the argument on the 112 first paragraph, Applicant stated that the specification clearly describes the modules together with the figures 3-5: the computation module in pars. 0040-0057, the input module and storage module in par. 0031, and the output module in par. 0043. The description of these modules is “clear and concise”. This argument is not persuasive. The specification discloses the modules may also be implemented in software for execution by various types of processors as indicated in par. 0030. However, it is unclear what are the function of the

software involve in the modules are using to calculate the result of the three steps *calculating a plurality of option preferences of each option for each party*", "*calculating a plurality of sum of weighted option preferences for the issue wherein the sum of weighted option preferences is the sum of the issue weight of each option for each party multiplied by the option preference of each option for each party*", and "*calculating a negotiation solution from the sum of weighted option preferences, the negotiation solution comprising an option set*". Applicant is requested to supply the name and the function of the modules above so that a person of ordinary skill in the art can make or use the invention. Therefore, the rejection on 112 first paragraph is maintained for the reason as indicated above.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy-Vi Nguyen whose telephone number is 571-270-1614. The examiner can normally be reached on Monday through Thursday from 8:30 A.M to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./  
Examiner, Art Unit 3689

/Tan Dean D. Nguyen/  
Primary Examiner, Art Unit 3689  
3/27/09